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SUGARFINA, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SUGARFINA, INC., a Delaware
corporation,

Plaintiff,

v.

BOUQUET BAR, INC., a Delaware
corporation; BOUQUET BAR, LLC, a
Wyoming limited liability company;
DAVID (DAOUD) YUSUF, an
individual; ALEX AMIDI, an
individual; JEFFREY MATSEN, an
individual; and SAL AZIZ, an
individual,

Defendants.

Case No.: 8:18-CV-1305

**COMPLAINT FOR FEDERAL
TRADE DRESS INFRINGEMENT,
FEDERAL FALSE DESIGNATION
OF ORIGIN AND UNFAIR
COMPETITION, FEDERAL
PATENT INFRINGEMENT,
FEDERAL COPYRIGHT
INFRINGEMENT, AND STATE
UNFAIR COMPETITION**

JURY TRIAL DEMANDED

1 Plaintiff Sugarfina, Inc. (“Sugarfina”) complains and alleges as follows
2 against Defendants Bouquet Bar Inc., Bouquet Bar LLC, David (Daoud)
3 Yusuf, Alex Amidi, Jeffrey Matsen, and Sal Aziz (collectively, “Defendants”;
4 Bouquet Bar Inc. and Bouquet Bar LLC are collectively referred to as
5 “Bouquet Bar”).

6 **NATURE OF THE ACTION**

7 1. Sugarfina revolutionized the candy industry when it launched in 2012.
8 Its founders, Joshua Resnick and Rosie O’Neill, dreamt of creating a luxury boutique
9 retailer of curated candies and sweets. The inspiration behind Sugarfina sprouted
10 during a screening of the original “Willy Wonka and the Chocolate Factory” and the
11 simple question: why should kids have all the fun?

12 2. Since 2012, Mr. Resnick and Ms. O’Neill have traveled the world to
13 meet with artisan candy-makers and have taste-tested thousands of candies in their
14 search to find the best of the best. Today, this experience has culminated in Sugarfina
15 redefining confectioneries and the associated gift-giving experience, including
16 painstakingly creating high quality, distinctive packaging for its redefined
17 confectioneries. In the years since its founding, Sugarfina has established itself as
18 offering unique luxury products to a highly engaged customer base.

19 3. Sugarfina’s early efforts have now grown to a thriving business that
20 employs over 400 people and operates across various commercial channels,
21 including storefronts, e-commerce, wholesale, and corporate partnerships. Each of
22 these channels are geared towards a luxury gifting experience, where customers are
23 invited to, among other offerings, “mix and match” different items using Sugarfina’s
24 Candy Bento Box® products.

25 4. Sugarfina’s retail channel focuses on building a footprint at high-end
26 luxury spaces. Currently, Sugarfina operates over fifty retail locations throughout the
27 United States and Canada, with many additional storefronts planned throughout the
28 globe.

1 5. Sugarfina's wholesale channel caters to premium reseller partners
2 such as Bergdorf Goodman and the Four Seasons Hotels. Its corporate channel caters
3 to institutional clients seeking to personalize packaging or coordinate events. Many
4 of Sugarfina's wholesale and corporate accounts overlap with Defendants' known
5 accounts.

6 6. Sugarfina's distribution channels are well established. Sugarfina is
7 well known for its trade dress throughout the United States.

8 7. From inception, Sugarfina has cultivated unmistakable proprietary
9 features in its products and packaging that are uniquely associated with Sugarfina.
10 These trade dress features are used consistently throughout its course of business.

11 8. Sugarfina currently has approximately 140 different lines of candy,
12 i.e., products, each presented in a revolutionary and sophisticated presentation and
13 packaging that evidences Sugarfina's commitment to luxury and quality. Among
14 the signature innovations of Sugarfina's branding is its presentation of candy in
15 museum-quality material that emphasizes the artisanal and rarified quality of a
16 gourmet small-portion tasting experience. Because of its innovative packaging and
17 distinctive design, coupled with impeccable attention to the quality of its candy,
18 Sugarfina products continue to thrive.

19 9. Sugarfina's creative achievements have resulted in broad intellectual
20 property protection for Sugarfina's innovations, including design patents, trademarks,
21 copyrights, and trade dress protection. Because of its success, Sugarfina's
22 innovations have been the subject of emulation by its competitors, who have
23 attempted to capitalize on Sugarfina's success by imitating Sugarfina's innovative,
24 elegant, and distinctive products and packaging.

25 10. Among these imitators are Defendants, who introduced a line of
26 products under the Bouquet Bar name to compete directly with Sugarfina products.
27 Instead of pursuing independent product development, Defendants have chosen to
28

1 copy Sugarfina's innovative, distinctive, and elegant product and packaging trade
2 dress in violation of Sugarfina's valuable intellectual property rights.

3 11. As alleged below, and as recognized by Defendants themselves on a
4 recent episode of the ABC television program *Shark Tank*, Defendants have made
5 and packaged their candy to look like Sugarfina's products through widespread
6 trade dress, patent and copyright infringement.

7 12. By this action, Sugarfina seeks to put a stop to Defendants' illegal
8 conduct and obtain compensation for these violations.

9 **THE PARTIES**

10 13. Plaintiff Sugarfina is a Delaware corporation having its principal
11 place of business at 1700 East Walnut Avenue, El Segundo, CA 90245.

12 14. Upon information and belief, Defendant Bouquet Bar Inc. is a
13 Delaware corporation with its principal office at 15791 Rockfield Boulevard, Suite
14 E, Irvine, CA 92618. Bouquet Bar Inc. was incorporated on October 30, 2017.

15 15. Upon information and belief, Defendant Bouquet Bar LLC was a
16 Wyoming limited liability company with its principal office at 15791 Rockfield
17 Boulevard, Suite E, Irvine, CA 92618. On November 16, 2017, Defendant Yusuf
18 filed the Articles of Dissolution for Defendant Bouquet Bar LLC with the
19 Wyoming Secretary of State.

20 16. Upon information and belief, Defendant David (Daoud) Yusuf is an
21 individual residing in Mission Viejo, California. Mr. Yusuf is the incorporator,
22 Chief Executive Officer, and one of the owners of Bouquet Bar Inc.; the founder,
23 managing partner, and registered agent of Bouquet Bar LLC; and the registrant of
24 www.bouquetbar.com, which sells infringing products.

25 17. Upon information and belief, Defendant Alex Amidi is an individual
26 residing in Santa Ana, California. Mr. Amidi is one of the owners of Bouquet Bar
27 Inc., and one of the managing partners and registered agents of Bouquet Bar LLC.
28

22. This Court has personal jurisdiction over Defendants because they have a regularly established place of business in this District, reside in this District, and have committed and continue to commit acts of infringement in violation 15 U.S.C. § 1125 and 17 U.S.C. §§ 101 *et seq.*, and place infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of California, including in this District. The acts by Defendants cause injury to Sugarfina within this District.

23. Upon information and belief, Defendants also derive substantial revenue from the sale of infringing products within this District, expect their actions to have consequences within this District, and derive substantial revenue from interstate and international commerce.

VENUE

24. Venue is proper within this District under 28 U.S.C. §§ 1391(b) and 1367(a) because Defendants transact business within this district and offer for sale in this district products that infringe Sugarfina's trade dress, patents, and copyrights. In addition, venue is proper because Defendants' and Sugarfina's principal place of business is in this district and Sugarfina suffered harm in this district. Moreover, a substantial part of the events giving rise to the claim occurred in this district.

BACKGROUND

Sugarfina's Innovations

25. Sugarfina is a luxury candy boutique well recognized for its distinctive products sold under the SUGARFINA® brand using novel and original designs in its packaging. Defendants are well aware that Sugarfina is the owner of trade dress rights, copyright registrations, patents and all other intellectual property rights embodied in Sugarfina's product packaging, including the following (having received cease and desist letters dated October 17, 2017 and January 30, 2018, and having discussed Sugarfina by name on national television):

- U.S. Design Patent No. D763,684

- 1 • U.S. Copyright Reg. No. VA0001963483
- 2 • U.S. Copyright Reg. No. VA0001963482
- 3 • Distinctive Trade Dress

4 (collectively, all intellectual property rights, the “Intellectual Property Rights”).

5 26. As a direct result of its innovative, proprietary, and distinctive trade
6 dress, Sugarfina products have been a remarkable success, and their trade dress
7 have immediately become uniquely associated with Sugarfina as their source.

8 27. Sugarfina products, with its branded packaging, have been
9 extensively advertised throughout the United States to capitalize on the existing
10 distribution channels, including social media and internet marketing, with the vast
11 majority of the advertisements featuring photographs of the distinctive trade dress
12 of the Sugarfina products.

13 28. In addition, Sugarfina’s products have received unsolicited comment
14 and attention in print and social media throughout the world. Each new Sugarfina
15 product is the subject of positive commentary and receives unsolicited praise from
16 independent social commentators. Frequently, these unsolicited commentaries are
17 accompanied by images of various Sugarfina products, including their unique trade
18 dress that is solely associated with Sugarfina.

19 29. The Sugarfina product design has come to represent and symbolize
20 the superb quality of Sugarfina’s products and enjoys substantial goodwill among
21 consumers.

22 30. Sugarfina has received many awards for its signature designs and
23 innovations including, but not limited to, the Addy Gold award, the Chain Store Age
24 Breakout Retailer award, the Association of Corporate Growth Los Angeles Market
25 Disruption award, and Fast Company’s 50 Most Innovative Companies award.

Sugarfina's IP Rights

Sugarfina's Trade Dress

31. Sugarfina holds trade dress protection in the design and appearance of all of its distinctive product packaging and presentation.

32. Sugarfina's product packaging and presentation are radically different from the candy and gift-giving stores that preceded it. It has a distinctive presentation and appearance—a total image and overall appearance that is unique, including features such as size, shape, color or color combinations, texture, graphics, and sales techniques. As shown below, the result is a luxury product that is accessible and visually appealing to the ordinary observer. Sugarfina's product design immediately became closely associated with Sugarfina.



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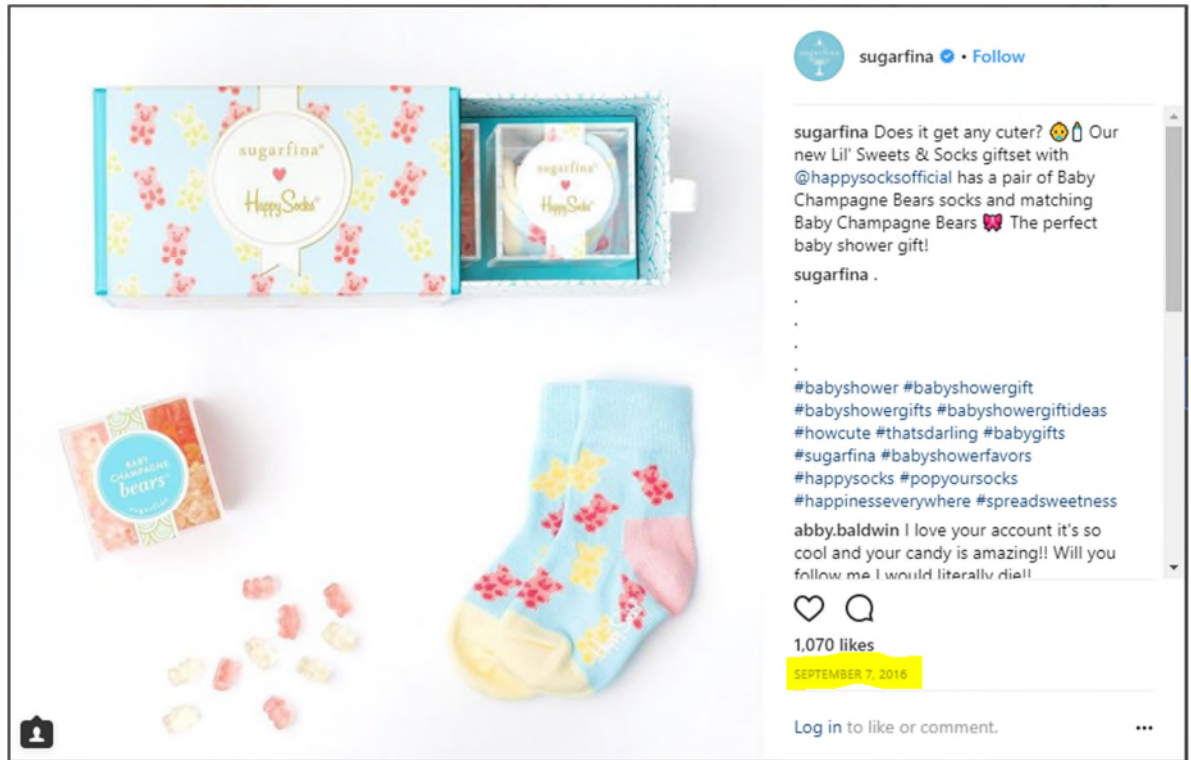
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33. The trade dress elements of the Sugarfina product packaging are distinctive, non-functional, and serve to identify Sugarfina as the source of its products.

34. The following elements of Sugarfina's product packaging comprise the trade dress at issue in this case (the "Sugarfina Trade Dress"):

- an individual clear top cube with a label with a patterned band and shapes (namely, circles, diamonds, or hearts), and a triangular end-tab containing candy product.
- a rectangular or square product package with minimal lettering.
- the inside bottom surface of the product package dominated by a series of cube wells or trays.

1 • the series of cube wells each being spaced from one another within the
2 product package.

3 • a series of clear top cubes with labels with a patterned band, overlaid
4 shapes (namely, circles, diamonds, or hearts), and a triangular end-tab containing
5 candy product that each reside in a corresponding cube inside the box.

6 The following images illustrate Sugarfina's consistent use of the Sugarfina Trade
7 Dress across its products:





35. Defendants have improperly capitalized on the Sugarfina Trade Dress.

36. Defendants have purposely taken steps to adopt the Sugarfina Trade Dress, and to encourage consumers to confuse the two brands so as to profit from the goodwill Sugarfina has acquired.

37. The Sugarfina Trade Dress is non-functional in that there exist wide and varied ways to design packaging that contains gifts and candy. As such, Defendants are not unduly impeded from engaging in their own design and presentation of their products, so long as they do not steal from the Sugarfina Trade Dress.

38. None of the claimed features of the Sugarfina Trade Dress, either alone or in combination, are either essential to packaging gifts or candy or confer any

1 benefit to Defendants aside from enabling them to trade on Sugarfina's reputation by
2 carefully imitating the look and feel of the Sugarfina Trade Dress.

3 39. In addition to its inherent distinctiveness, through Sugarfina's
4 extensive advertising and promotion, the Sugarfina Trade Dress has been firmly
5 established as having gained secondary meaning. As mentioned above, consumers
6 readily connect the defined trade dress exclusively with Sugarfina as confirmed by
7 the awards it has won for its innovative design.

8 Sugarfina's Design Patent

9 40. Sugarfina has protected its innovative designs and packaging through
10 design patents issued by the United States Patent and Trademark Office.

11 41. Sugarfina owns all right, title, and interest in and to the asserted U.S.
12 Design Pat. No. D763,684, titled "Packaging," a true and correct copy of which is
13 attached as Exhibit 1.

14 Sugarfina's Copyrights

15 42. Sugarfina has protected its innovative designs, packaging, and
16 marketing materials through copyrights registered with the United States Copyright
17 Office. The Sugarfina copyrights cover the use of the candy cubes, the spaced cube
18 arrangement, the spaced cube receiving wells, and the distinctive use of a box to
19 hold the clear cubes.

20 43. Sugarfina owns all right, title, and interest in and to each of the
21 following asserted copyrights, true and correct copies of which are attached as
22 Exhibits 2 and 3: Reg. Nos. VA0001963482 and VA0001963483.

23 Defendants' Infringing Products

24 44. Upon information and belief, Defendants previously operated a floral
25 company for events (e.g., social occasions, weddings). In operating their previous
26 company, Defendants provided floral services at events where Sugarfina's products
27 were available. Defendants have, for example, distributed a social media post
28

1 showing Defendants' floral arrangements alongside Sugarfina products at the same
2 event.

3 45. Defendants then, with actual knowledge of Sugarfina's products and
4 Intellectual Property Rights, launched Bouquet Bar LLC in January 2017, and
5 Bouquet Bar Inc. in October 2017, intentionally copying Sugarfina's Intellectual
6 Property Rights.

7 46. Defendants have imported into or sold in the United States the
8 following products, each of which infringes one or more of Sugarfina's Intellectual
9 Property Rights: "The Shot," "The Cocktail," "The Martini," "Love Rocks," "Love
10 Box," "Love Box 1," "Love Box 2," "Love Box 3," "Love Box 4," "Thank You
11 Box," "Thank You Box 5," "Sympathy Box," "Sympathy Box 1," "Sympathy Box
12 2," "Birthday Box," "Birthday Box 3," "Birthday Box 4," "Birthday Box 5,"
13 "Birthday Box 7," "Legends Box," "Fit Box," "My Girl," "Spa Box," among others
14 (collectively, the "Accused Products"). Attached as Exhibit 4 is a true and correct
15 copy of pictures of the Accused Products.

16 47. The Defendants sell the Accused Products to the public containing,
17 in whole or in part, candy.

18 48. The Defendants promotes and advertises the sale of candy in whole
19 or in part materials sent to customers.

20 49. Candy products distributed and sold by the Defendants in the
21 Accused Products include without limitation, milk chocolate cookie dough bites,
22 milk chocolate dipped gummy bears, milk chocolate covered pretzels, watermelon
23 gummy rings, milk chocolate covered raisins, peach gummy rings, orange burst
24 gummy bears, green apple gummy bears, cayenne infused dark chocolate disks,
25 dark chocolate covered sea salt caramels, mint cookie malted milk balls, lavender
26 dark chocolate drops, and chocolate truffles.

1 50. Rather than innovate and develop its own packaging and unique style
2 for its candy products, Defendants chose to copy Sugarfina's innovative Intellectual
3 Property Rights in these infringing products.

4 51. Defendants had many options in developing and packaging their
5 candy.

6 52. Defendants deliberately chose to infringe on Sugarfina's Intellectual
7 Property Rights without investing any of the resources or innovation required to
8 develop a strong non-infringing brand identity and intellectual property portfolio.

9 ***Shark Tank Admission of Copying***

10 53. Defendants Yusef, Amidi, and Aziz appeared on the January 21,
11 2018 episode of the ABC show *Shark Tank* to present Defendants' goods and
12 services for potential investment by experts in the field. Instead, Defendants were
13 confronted with their clear copying of Sugarfina's Intellectual Property Rights.

14 54. Lori Greiner is featured on *Shark Tank* as "one of the most prolific
15 inventors of retail products, having created over 500 products, and currently holds
16 over 120 U.S. and international patents." See [http://abc.go.com/shows/shark-](http://abc.go.com/shows/shark-tank/cast/lori-greiner)
17 [tank/cast/lori-greiner](http://abc.go.com/shows/shark-tank/cast/lori-greiner). Ms. Greiner pointedly asked Defendants Yusef, Amidi, and
18 Aziz, how Bouquet Bar was different from Sugarfina, especially given the
19 likelihood that the Accused Products were using Sugarfina's trademarked
20 packaging: "So I have to call out the white elephant for me in the room. This looks
21 just like Sugarfina. . . . Sugarfina started off with a box like this and they fill it with
22 different candies. ***It is sort of their trademark.*** . . . You need to do something that is
23 going to be different. . . . You are flower experts but you've got to think of how are
24 you going to beat it or be more unique or different."¹

25 55. Ms. Greiner expressly declined to invest in Bouquet Bar because it
26 had not defined its business, and she reiterated her advice that Bouquet Bar should
27

28 ¹ See <http://abc.go.com/shows/shark-tank/episode-guide/season-09/19-episode-19>,
at 6:59 to 7:34.

1 focus on developing its expertise in flowers: “If you had come in with really cool,
 2 innovative, different, gorgeous floral things, and your price was great, I’d be going
 3 to you. . . . But you haven’t figured the business out yet, and for that reason, I’m
 4 out.”²

5 56. Despite a clear warning from a retail expert that the Accused
 6 Products copied Sugarfina’s Intellectual Property Rights, Bouquet Bar made no
 7 changes to the design of the Accused Products.

8 57. Indeed, Defendants refused to heed Ms. Greiner’s advice that
 9 Bouquet Bar differentiate itself, despite having months between the taping of the
 10 *Shark Tank* episode and its public airing to make changes.

11 ***Sugarfina’s Notification to Bouquet Bar***

12 58. Sugarfina’s efforts to address Defendants’ pervasive copying of
 13 Sugarfina’s Intellectual Property Rights directly with Defendants have been
 14 unsuccessful. On October 17, 2017, Sugarfina sent a cease and desist letter to
 15 Defendants advising them of their ongoing infringement of Sugarfina’s Intellectual
 16 Property Rights. Defendants have refused to change their product or packaging
 17 design in response to Sugarfina’s request, and indeed ignored the advice of *Shark*
 18 *Tank*’s retail experts Lori Greiner, that Defendants do more to differentiate the
 19 Accused Products from Sugarfina’s trademark and trade dress. On January 30,
 20 2018, Sugarfina again demanded that Defendants cease and desist their infringing
 21 activities.

22 59. Sugarfina also has undertaken face-to-face meetings with Defendants
 23 to explain Sugarfina’s concerns and engage in a good faith effort to resolve this
 24 matter.

25 60. Instead, between October and November 2017, Defendants dissolved
 26 Bouquet Bar LLC and incorporated Bouquet Bar Inc. Upon information and belief,
 27 these actions were an attempt to further shield the individuals from liability, while
 28

² See *id.*, at 7:44 to 7:59.

they continued to sell infringing products. Even after receiving Sugarfina's demand letters and being confronted about their infringement on *Shark Tank*, Defendants publicly flaunted their infringing behavior on social media:



61. Defendants chose to infringe Sugarfina's Intellectual Property Rights through the design, packaging and promotion of their candy products, and they did so willfully—with actual knowledge—to trade upon the goodwill that Sugarfina has developed in connection with its luxury branded products.

62. As further confirmation of the intentional and systematic copying of Sugarfina by Defendants, Defendants have purchased "Sugarfina" as a keyword for sponsored Bouquet Bar posts on Instagram and other social media sites.

63. In Sugarfina's cease and desist letter dated October 17, 2017, Sugarfina made precisely the same demand: "Sugarfina demands that you ***refrain from selling and promoting candy products*** in cubes and gift boxes with spaced cube receiving wells that infringe Sugarfina's intellectual property rights." Defendants refused.

Infringement of Sugarfina's Trade Dress

64. In 2017, Defendants began producing, selling, and marketing their copycat products, which was well after Sugarfina's first use of the asserted Sugarfina Trade Dress and long after Sugarfina acquired secondary meaning in the

Sugarfina Trade Dress. Shown below and attached as Exhibit 5 is a true and correct copy of pictures of the respective trade dress of the parties.

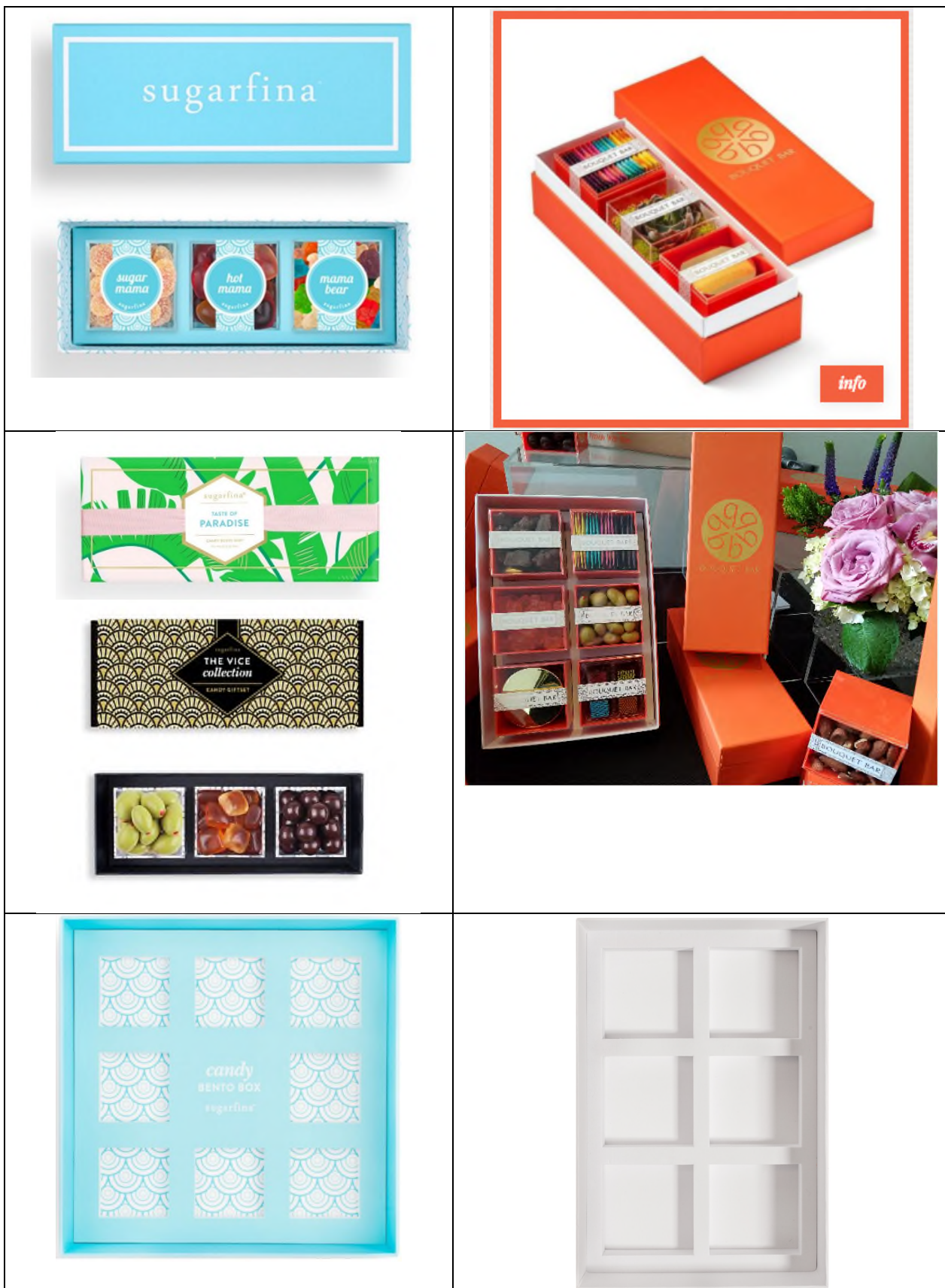


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65. Each of Defendants' lines of accused products embodies the elements of the Sugarfina Trade Dress identified above.

66. The intentional copying of the distinctive Sugarfina Trade Dress by the Defendants confirms that the Sugarfina Trade Dress has acquired secondary meaning.

67. Defendants' systematic copying of the Sugarfina Trade Dress is likely to cause customer confusion, or has actually caused customer confusion, as to an affiliation with Sugarfina and/or an initial interest confusion based on Sugarfina's goodwill with the marketplace.

68. Defendants' adoption of a trade dress that copies the Sugarfina Trade Dress is likely to cause confusion or mistake, or to deceive consumers, purchasers, and others into thinking that Defendants' products are Sugarfina products, or that they are sponsored by or affiliated with Sugarfina, when they are not.

69. Sugarfina's goodwill among consumers is closely tied to its position as an outlier in confectioners' products—that of luxury and sophistication.

Defendants' flagrant and relentless copying of Sugarfina's Trade Dress rights in their candy products not only allows Defendants to benefit from Sugarfina's investment, but it also threatens to diminish the very important goodwill that Sugarfina has cultivated in the Sugarfina Trade Dress.

Infringement of Sugarfina's Design Patent

70. Sugarfina was selling its Candy Bento Box® products long before Defendants introduced their spurious products. An example of Sugarfina's Candy Bento Box® is shown below.



71. Sugarfina filed a design patent application covering its unique packaging, such as the packaging shown above. That design patent application issued on August 16, 2016, as U.S. Design Patent No. D763,684 (the 'D684 Patent), and is titled "Packaging."

72. The 'D684 Patent claims "[t]he ornamental design for a packaging, as shown and described" in the patent. FIG. 1 of the 'D684 Patent is reproduced below. FIG. 1 depicts an exploded perspective view of the patented design.

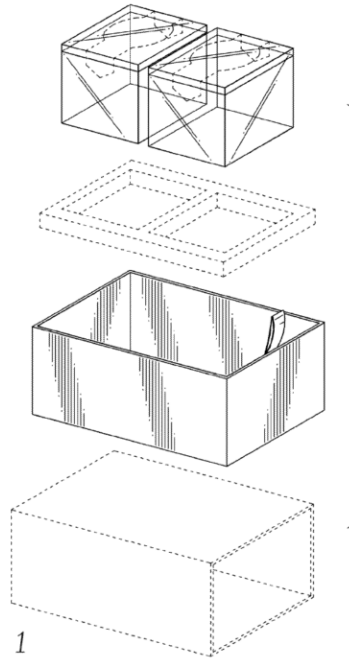


FIG. 1

73. FIG. 2 of the 'D684 Patent is reproduced below. FIG. 2 depicts a perspective view of the patented design.

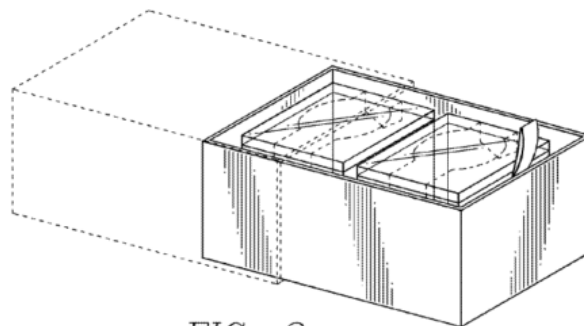


FIG. 2

74. FIG. 3 of the 'D684 Patent is reproduced below. FIG. 3 depicts a side view of the patented design.

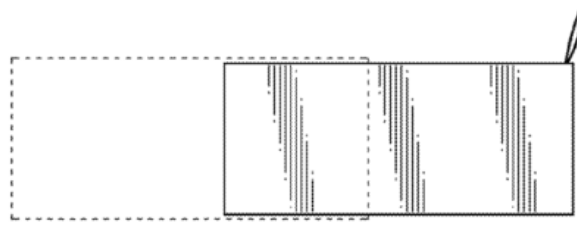


FIG. 3

75. FIG. 4 of the 'D684 Patent is reproduced below. FIG. 4 depicts a top view of the patented design.

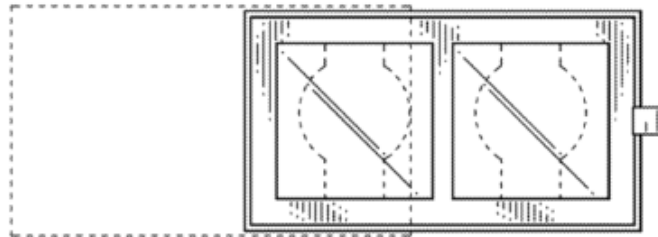


FIG. 4

76. FIGS. 5-6 of the 'D684 Patent are reproduced below. FIG. 3 depicts a front view of the patented design. FIG. 4 depicts a rear view of the patented design.

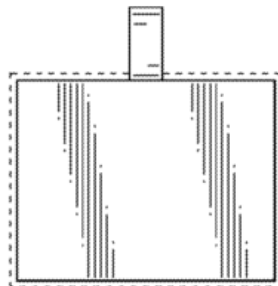


FIG. 5

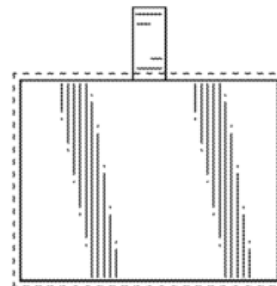


FIG. 6

77. Defendants began marketing a copycat product in 2017, a sample of which is shown below.



78. A side-by-side comparison between Sugarfina's product embodying the 'D684 patent and Defendants' copycat product is shown below and attached as Exhibit 6 is a true and correct copy of pictures of the products of the respective parties:

<i>Sugarfina's Original Use</i>	<i>Bouquet Bar's Infringing Use</i>
	
	



79. An ordinary observer of Defendants' packaging and Sugarfina's patented design would find the two designs to be substantially the same. The 'D684 Patent claims a packaging including cubes arranged in two cells spaced apart and nested fully within a rectangular box with high, straight walls. As shown above, Defendants' design also includes cubes arranged in two cells spaced apart and nested fully within a rectangular box with high, straight walls. An ordinary observer would recognize that Defendants' design is substantially the same as the patented design in the 'D684 Patent. The overall impression of the two designs is substantially the same.

80. Indeed, it is axiomatic that the 'D684 Patent is infringed by Defendants' design because in the eye of an ordinary observer, Defendants' design is substantially the same as the claimed design in the 'D684 Patent. And indeed, an

1 ordinary observer has already been shown, and pointed out to Defendants directly
2 by the hosts on the *Shark Tank* television program.

3 ***Infringement of Sugarfina's Copyrights***

4 81. In addition to the Sugarfina Trade Dress and patent protections,
5 Sugarfina also has copyright protection for its three-piece designer candy boxes and
6 its designer candy bento boxes at Reg. Nos. VA0001963482 and VA0001963483.

7 82. Defendants have had access to the copyrighted boxes because
8 Sugarfina has been selling and marketing them to the public, in the same industry
9 and using the same marketing channels as Defendants, since at least as early as
10 2013.

11 83. In a blatant attempt to copy Sugarfina, Defendants designed and
12 developed near exact imitations of Sugarfina's registered works.

13 84. Long after Sugarfina introduced its copyrighted designs, Defendants
14 began actively selling these infringing products to retailers and unwitting
15 consumers. Defendants' infringing products are strikingly similar imitations of
16 Sugarfina's protected products. Defendants copied all the original and distinctive
17 qualities of Sugarfina's products, including the configuration of multiple cells of
18 transparent top cubes spaced apart and nested fully within a rectangular or square
19 box with high, straight walls; the use of labels with patterned bands, overlaid
20 shapes, and a triangular end-tab on the transparent top cubes within the outer box;
21 and specific graphic elements designed by Sugarfina, such as the prints, patterns,
22 and colors imprinted on the boxes and labels.

23 85. Defendants have no license from Sugarfina to make replicas of
24 Sugarfina's registered original works. On the contrary, at least as early as October
25 17, 2017, Sugarfina demanded that Defendants cease their infringing activities.
26 Defendants refused to comply and have continued knowingly and willfully to
27 create, market, and distribute products infringing Sugarfina's copyrights.
28

FIRST CLAIM FOR RELIEF

(Trade Dress Infringement)

(Lanham Act Section 43(a), 15 U.S.C. § 1125(a))

86. Sugarfina incorporates and realleges paragraphs 1-85 of this Complaint as though set forth in full.

87. Sugarfina is the owner of all right and title to the distinctive Sugarfina Trade Dress. The Sugarfina Trade Dress, as embodied in Sugarfina products, is inherently distinctive and not functional.

88. In addition, based on extensive and consistent advertising, promotion and sales throughout the United States, the Sugarfina Trade Dress has acquired distinctiveness and enjoys secondary meaning among consumers, identifying Sugarfina as the source of these products prior to the actions of the Defendants complained of herein.

89. Sugarfina's extensive promotion of the distinctive Sugarfina Trade Dress has resulted in Sugarfina's acquisition of valuable, legally protected rights in the Sugarfina Trade Dress as well as considerable customer goodwill prior to the actions of the Defendants complained of herein.

90. Defendants intentional copying of the Sugarfina Trade Dress confirms that the Sugarfina Trade Dress has acquired secondary meaning.

91. Defendants' line of products has misappropriated the Sugarfina Trade Dress by mimicking the elements of that trade dress. The manufacture and distribution of Defendants' products with packaging and product design features that mimic the elements of the Sugarfina Trade Dress is likely to cause confusion, or to cause mistake, or to deceive the consumer as to the affiliation, connection or association of Defendants with Sugarfina, or as to the origin, sponsorship, or approval by Sugarfina of Defendants' goods, services or commercial activities.

92. Defendants' actions constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

93. At least as early as October 17, 2017, Defendants knew of the Sugarfina Trade Dress when they designed their products and have refused to change their product or packaging design in response to Sugarfina's request. Accordingly, Defendants' infringement has been and continues to be intentional, willful and without regard to Sugarfina's rights in the Sugarfina Trade Dress.

94. As a direct and proximate result of Defendants' unlawful acts and practices, including those set forth above, Defendants have caused, are causing, and unless immediately enjoined by this Court, will continue to cause immediate and irreparable harm to Sugarfina, for which there is no adequate remedy at law, and for which it is entitled to injunctive relief.

95. Sugarfina is informed and believes, and on that basis alleges, that Defendants have gained profits by virtue of their infringement of the Sugarfina Trade Dress.

96. Sugarfina also has sustained damages as a direct and proximate result of Defendants' infringement of the Sugarfina Trade Dress in an amount to be proven at trial.

97. Because Defendants' actions have been willful, Sugarfina is entitled to treble its actual damages or Defendants' profits, whichever is greater, and to an award of costs, and, this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF

(Unfair Business Practices – California Business and Professions Code § 17200, *et seq.*)

98. Sugarfina incorporates and realleges paragraphs 1-97 of this Complaint as though set forth in full.

1 99. The acts of Defendants described above constitute fraudulent and
2 unlawful business practices as defined by California Business & Professions Code
3 § 17200, *et seq.*

4 100. Sugarfina has valid and protectable prior rights in the Sugarfina
5 Trade Dress. The Sugarfina Trade Dress identifies Sugarfina as the source of its
6 candy products. The Sugarfina Trade Dress is inherently distinctive, and, through
7 Sugarfina's long use, has come to be associated solely with Sugarfina as the source
8 of the products on which it is used prior to the actions of the Defendants
9 complained of herein.

10 101. Defendants' use of the infringing trade dress is likely to cause
11 confusion as to the source of Defendants' products and is likely to cause others to
12 be confused or mistaken into believing that there is a relationship between
13 Defendants and Sugarfina or that Defendants' products are affiliated with or
14 sponsored by Sugarfina.

15 102. The above-described acts and practices by Defendants are likely to
16 mislead or deceive the general public and therefore constitute fraudulent business
17 practices in violation of California Business & Professions Code §§ 17200, *et seq.*

18 103. The above-described acts constitute unfair competition and trade
19 dress infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a),
20 and are therefore unlawful acts in violation of California Business & Professions
21 Code §§ 17200, *et seq.*

22 104. Defendants acted willfully and intentionally in designing their
23 infringing trade dress and product packaging, with full knowledge of Sugarfina's
24 prior rights in the distinctive Sugarfina Trade Dress and with an intent to cause
25 confusion or mistake or to deceive customers into believing that there is an
26 affiliation between Defendants and Sugarfina or between Defendants' products and
27 Sugarfina's products.
28

105. The unlawful and fraudulent business practices of Defendants described above present a continuing threat to, and is meant to deceive members of, the public in that Defendants desire to promote their products by wrongfully trading on the goodwill of the Sugarfina Trade Dress.

106. As a direct and proximate result of these acts, Defendants have received, and will continue to profit from, the strength of the Sugarfina Trade Dress.

107. As a direct and proximate result of Defendants' wrongful conduct, Sugarfina has been injured in fact and has lost money and profits, and such harm will continue unless Defendants' acts are enjoined by the Court.

108. Sugarfina has no adequate remedy at law for Defendants' continuing violation of Sugarfina's rights.

109. Defendants should be required to restore to Sugarfina any and all profits earned as a result of their unlawful and fraudulent actions, or provide Sugarfina with any other restitutionary relief as the Court deems appropriate.

THIRD CLAIM FOR RELIEF

(Infringement of the 'D684 Patent)

(35 U.S.C. § 271)

110. Sugarfina incorporates and realleges paragraphs 1-109 of this Complaint as though set forth in full.

111. Defendants have infringed and continue to infringe the 'D684 Patent by using, selling and/or offering to sell in the United States, and/or importing into the United States one or more of Defendants' infringing products identified in this Complaint, which embody the design covered by the 'D684 Patent, in violation of 35 U.S.C. § 271.

112. Defendants' infringement of the 'D684 Patent has taken place with full knowledge of the patent and is willful, deliberate, and intentional, and therefore gives rise to an exceptional case under 35 U.S.C. § 285.

113. Defendants' infringement of the 'D684 Patent has injured Sugarfina, the precise amount of which cannot be ascertained at this time. Sugarfina is entitled to recover damages adequate to compensate for Defendants' infringement, which in no event can be less than a reasonable royalty.

114. Defendants have caused Sugarfina substantial damages and irreparable injury by their infringement of one or more claims of the 'D684 Patent, for which there is no adequate remedy at law. Sugarfina will continue to suffer damages and irreparable injury unless and until Defendants' infringement is enjoined by this Court.

FOURTH CLAIM FOR RELIEF

(Copyright Infringement)

(17 U.S.C. §§ 101, *et seq.*)

115. Sugarfina incorporates and realleges paragraphs 1-114 of this Complaint as though set forth in full.

116. Sugarfina is the owner of exclusive rights under copyright with respect to the three-piece designer candy box and Sugarfina's Candy Bento Box®, Reg. Nos. VA0001963482 and VA0001963483.

117. Sugarfina has never granted to Defendants any license to make or market any unauthorized copies of, or derivative works based on, Sugarfina's products or registered works.

118. By means of the actions complained of herein, Defendants have infringed and will continue to infringe Sugarfina's copyrights in and relating to its registered works under 17 U.S.C. §§ 101, *et seq.* by creating, reproducing, distributing, selling, and/or offering for sale infringing products and product packaging containing strikingly similar reproductions of the registered works without authorization from Sugarfina.

119. Sugarfina is entitled to an injunction restraining Defendants, and all persons acting in concert with them, from engaging in further acts in violation of the copyright laws.

120. Sugarfina is further entitled to recover from Defendants the damages Sugarfina has sustained, and will sustain, as a result of Defendants' wrongful acts in an amount to be proven at trial. Sugarfina is further entitled to recover from Defendants any gains, profits, and advantages Defendants have obtained as a result of their wrongful acts.

121. Sugarfina is also entitled to damages, pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101, *et. seq.*, for Defendants' willful and continued infringement of the registered works and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Sugarfina prays for relief, as follows:

1. A judgment that Defendants have infringed the Sugarfina Trade Dress and violated the Lanham Act;

2. An order and judgment preliminarily and permanently enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from directly or indirectly infringing the Sugarfina Trade Dress or using any other product or packaging design or designations similar to or likely to cause confusion with the Sugarfina Trade Dress; from passing off Defendants' products as being associated with and or sponsored or affiliated with Sugarfina; from committing any other unfair business practices directed toward obtaining for itself the business and customers of Sugarfina; and from committing any other unfair business practices directed toward devaluing or diminishing the brand or business of Sugarfina;

3. An order granting such other and further relief as the Court may deem proper to prevent the public and trade from deriving the false impression that

1 any goods or services manufactured, sold, distributed, licensed, marketed,
2 advertised, promoted, or otherwise offered or circulated by Defendants are in any
3 way approved, endorsed, licensed, sponsored, authorized, or franchised by or
4 associated, affiliated, or otherwise connected with Sugarfina or constitute or are
5 connected with Sugarfina's goods and services;

6 4. An order directing Defendants to immediately cease all manufacture,
7 display, distribution, marketing, advertising, promotion, sale, offer for sale and/or
8 use of any and all packaging, labels, catalogs, shopping bags, containers,
9 advertisements, signs, displays, and other materials that feature or bear any
10 designation or mark incorporating the Sugarfina Trade Dress or any other mark that
11 is a counterfeit, copy, simulation, confusingly similar variation, or colorable
12 imitation of Sugarfina's Trade Dress, and to direct all distributors, retailers,
13 wholesalers, and other individuals and establishments wherever located in the
14 United States that distribute, advertise, promote, sell, or offer for sale Defendants'
15 goods or services to cease forthwith the display, distribution, marketing, advertising,
16 promotion, sale, and/or offering for sale of any and all goods, services, packaging,
17 labels, catalogs, shopping bags, containers, advertisements, signs, displays, and
18 other materials featuring or bearing Sugarfina's Trade Dress or any other mark that
19 is a counterfeit, copy, simulation, confusingly similar variation, or colorable
20 imitation of Sugarfina's Trade Dress, and to immediately remove them from public
21 access and view;

22 5. An order directing that Defendants recall and deliver up for
23 destruction or other disposition all goods, packaging, shopping bags, containers,
24 advertisements, promotions, signs, displays, and related materials incorporating or
25 bearing the Sugarfina Trade Dress or any other mark that is a counterfeit, copy,
26 confusingly similar variation, or colorable imitation of the Sugarfina Trade Dress;

27 6. An order directing, pursuant to Section 35(a) of the Lanham Act (15
28 U.S.C. § 1116(a)), Defendants to file with the court and serve upon Sugarfina's

1 counsel within thirty (30) days after service on Defendants of an injunction in this
2 action, or such extended period as the court may direct, a report in writing under
3 oath, setting forth in detail the manner and form in which Defendants have complied
4 therewith;

5 7. Actual damages suffered by Sugarfina as a result of Defendants'
6 unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest
7 as authorized by law;

8 8. Reasonable funds for future corrective advertising;

9 9. An order directing that Defendants account to and pay over to
10 Sugarfina all profits realized by its wrongful acts in accordance with Section 35(a)
11 of the Lanham Act (15 U.S.C. § 1117(a)), enhanced as appropriate to compensate
12 Sugarfina for the damages caused thereby;

13 10. A judgment trebling any damages award pursuant to 15 U.S.C.
14 § 1117;

15 11. A judgment that Defendants' activities constitute unfair competition
16 and a violation of California Business and Professions Code § 17200;

17 12. An order enjoining Defendants from all acts unfairly competing with
18 Sugarfina;

19 13. Restitutionary relief against Defendants and in favor of Sugarfina,
20 including disgorgement of wrongfully obtained profits and any other appropriate
21 relief;

22 14. Awarding Sugarfina punitive damages pursuant to California Civil
23 Code § 3294;

24 15. Awarding Sugarfina punitive and exemplary damages as the court
25 finds appropriate to deter any future willful infringement;

26 16. Costs of suit and reasonable attorneys' fees, including, but not
27 limited to, a finding that this case is exceptional and awarding attorneys' fees and
28 costs pursuant to 35 U.S.C. § 285;

1 17. Awarding Sugarfina interest, including pre-judgment and post-
2 judgment interest, on the foregoing sums; and

3 18. Any other remedy to which Sugarfina may be entitled, including all
4 remedies provided for in 15 U.S.C. § 1117, 17 U.S.C. §§ 101, *et seq.*, Cal. Bus. &
5 Prof Code §§ 17200, *et seq.*, 17500, *et seq.*, and under any other California law, and
6 such other and further relief as the Court deems just and proper;

7 19. A judgment that Defendants have infringed Sugarfina's asserted
8 patent;

9 20. An order and judgment preliminarily and permanently enjoining
10 Defendants and their officers, directors, agents, servants, employees, affiliates,
11 attorneys, and all others acting in privity or in concert with them, and their parents,
12 subsidiaries, divisions, successors and assigns, from further acts of infringement of
13 Sugarfina's asserted patent;

14 21. A judgment awarding Sugarfina all damages adequate to compensate
15 for Defendants' infringement of Sugarfina's asserted patent, and in no event less
16 than a reasonable royalty for Defendants' acts of infringement, including all pre-
17 judgment and post-judgment interest at the maximum rate permitted by law;

18 22. A judgment awarding Sugarfina all damages, including treble
19 damages, based on any infringement found to be willful pursuant to 35 U.S.C. §§
20 284, including actual damages and an award of Defendants' total profits associated
21 with the infringing sales under 35 U.S.C. §§ 289, together with prejudgment
22 interest;

23 23. A judgment that Defendants have infringed the copyrights of
24 Sugarfina and violated Section 501 of the Copyright Act (17 U.S.C. § 501);

25 24. An order granting an injunction preliminarily and permanently
26 enjoining the Defendants and their respective employees, agents, officers, directors,
27 attorneys, successors, affiliates, subsidiaries, and assigns, and all of those in active
28

1 concert and participation with any of the foregoing persons and entities who receive
2 actual notice of the Court's order by personal service or otherwise, from:

3 (a) manufacturing, distributing, marketing, advertising, promoting, displaying,
4 performing, or selling or authorizing any third party to manufacture,
5 distribute, market, advertise, promote, display, perform, or sell the infringing
6 products and any products, works, or other materials that include, copy, are
7 derived from, or otherwise embody the Sugarfina's copyrights;

8 (b) reproducing, distributing, performing, or publicly displaying Sugarfina's
9 copyrights, creating any derivative works based on Sugarfina's copyrights, or
10 engaging in any activity that infringes Sugarfina's rights in its copyrights; and

11 (c) aiding, assisting, or abetting any other individual or entity in doing any act
12 prohibited by sub-paragraphs (a) or (b);

13 25. That Defendants be ordered to provide an accounting of Defendants'
14 profits attributable to Defendants' infringing conduct, including Defendants' profits
15 from sales of the infringing products and any products, works, or other materials that
16 include, copy, are derived from, or otherwise embody Sugarfina's copyrights;

17 26. That Defendants be ordered to destroy or deliver up for destruction
18 all materials in Defendants' possession, custody, or control used by Defendants in
19 connection with Defendants' infringing conduct, including without limitation all
20 remaining inventory and copies of the infringing products and any products and
21 works that embody any reproduction or other copy or colorable imitation of
22 Sugarfina's copyrights, as well as all means for manufacturing them;

23 27. That Defendants, at their own expense, be ordered to recall the
24 infringing products from any distributors, retailers, vendors, or others that have
25 distributed the infringing products, and any products, works or other materials that
26 include, copy, are derived from, or otherwise embody the infringing products or
27 Sugarfina's copyrights, and that Defendants be ordered to destroy or deliver up for
28 destruction all materials returned to them;

28. An order awarding Sugarfina:

(a) Defendants' profits obtained as a result of Defendants' infringing conduct, including but not limited to all profits from sales of the infringing products and any products, works, or other materials that include, copy, are derived from, or otherwise embody the infringing products or Sugarfina's copyrights, or in the Court's discretion, such amount as the Court finds to be just and proper;

(b) damages sustained by Sugarfina as a result of Defendants' infringing conduct, in an amount to be proven at trial;

(c) should Sugarfina so elect, statutory damages pursuant to 17 U.S.C. § 504(c) instead of actual damages or profits; and

(d) Sugarfina's reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 (b) of the Federal Rules of Civil Procedure, Sugarfina hereby demands trial by jury on all issues raised in the Complaint.

Dated: July 27, 2018

TROUTMAN SANDERS LLP

By: /s/ *Jenny Kim*

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John M. Bowler
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